IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 704 of 1999

ST.125/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM

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APPELLANT/COMPLAINANT:

THE DHANALAKSHMI BANK LTD., FORT BRANCH,
THIRUVANANTHAPURAM REPRESENTED BY ITS MANAGER,
VARGHESE MENACHERY, AGED 48 YEARS, S/O.LATE M.V.ITTIRA
4/D SKYLINE RESIDENCY APARTMENTS,
POOJAPPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS/STATE/ACCUSED:

1. STATE OF KERALA REPRESENTED BY DIRECTOR OF PUBLIC PROSECUTION, THIRUVANANTHAPURAM.

2. R. REMANAN, K.R. TOURIST HOME/ASWATHI BAR, OPPOSITE TO RAILWAY STATION, VARKALA - 695141.

3. M. BAIJU, PROPRIETOR, M/S.FINE STAR RELEASE, T.C. 24/287, SASTHAMCOIL ROAD, THYCAUD, THIRUIVANANTHAPURAM.

BY ADV. SRI.R.ANILKUMAR
R1 BY SHRI K.M. FIROZ, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 704 of 1999

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against the order of acquittal passed in a complaint filed under section 138 of the Negotiable Instruments Act. Accused was acquitted for the absence of the complainant under section 256 (1) of the Code of Criminal Procedure. In this case, both the accused persons entered appearance before the trial court through advocate. The complainant was examined as PW1. The case was adjourned for examining the Manager of the Catholic Syrian Bank Limited. The case was adjourned since there was no sitting on that day and complainant also filed a petition to examine two more witnesses. According to the petitioner, the advocate's clerk noted the next date of posting as 11.8.1999, but, 11.8.1999 being Karkkidaka Vavu, the Bench Clerk informed that the case will be called on 13.8.1999. But, on 13.8.1999, it was noticed that the accused was acquitted on 11.8.1999 itself. According to him, he was present in the court with his advocate, but, the case was not called at all on 11.8.1999. In any event, here, the complainant was examined. Even though trial court has got power to acquit the accused for the absence of the complainant, it cannot be done mechanically in the

absence of the complainant. I am of the opinion that on the facts and circumstances of the case, the matter should be remanded. I am not expressing any opinion regarding the merits of the case as further evidence has to be adduced by the parties. Parties may appear before the trial court on 29.3.2007. Since notice issued to third respondent (second accused) was not so far served, the trial court should inform the counsel appearing before the trial court regarding the date of posting. Since I am not deciding on the merits of the matter, no prejudice will be caused by adopting such a course. The second respondent (first accused) entered appearance before this court also. This order is passed after hearing him. The complainant and the accused should be present before the trial court on 29.3.2007.

The appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl. A. No.704 of 1999

Judgment

14-2-2007